

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DERRICK McCANN,

Plaintiff,

ORDER

v.

10-cv-772-wmc

CHELSEA LLOYD,

Defendant.

This is a proposed civil action that plaintiff Derrick McCann, proceeding pro se, has filed against defendant Chelsea Lloyd for interfering with the custody of his children, who not coincidentally are also hers. McCann has been allowed to proceed without prepayment of costs and fees in this action.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Because McCann is requesting leave to proceed without prepayment of costs, however, his complaint must be screened by the court and dismissed if it is (1) frivolous or malicious, (2) fails to state a claim upon which relief may be granted, or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

In a December 10, 2010 order, the Magistrate Judge gave McCann until January 11, 2011, to submit information establishing the citizenship of the parties and to list any money damages that he is requesting before he could proceed on his state law tort claim in this

court. In his December 23, 2010 response to this order, McCann stated that defendant “stays in North Carolina” and plaintiff “stays in Madison, Wisconsin.” He asserts that the amount of damages he is seeking is \$50,000.

Because McCann is pursuing a state law tort claim, this court has jurisdiction only if McCann and defendant Lloyd are citizens of different states and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). McCann does not submit documentation that he and the defendant are citizens of different state. More importantly, he specifically asserts that he is seeking \$50,000 in damages. Because this amount is substantially lower than the jurisdictional amount required under § 1331 (a), McCann’s complaint must be dismissed for lack of subject matter jurisdiction.

ORDER

IT IS ORDERED that plaintiff Derrick McCann’s complaint is DISMISSED for lack of subject matter jurisdiction.

Entered this 13th day of April, 2011.

BY THE COURT:

/s/

WILLIAM M. CONLEY

District Judge